

STATE OF TEXAS §
 §
 COUNTY OF FORT BEND §

ADDENDUM TO PROPOSAL FOR PROFESSIONAL ENGINEERING SERVICES

This Addendum ("Addendum") is made and entered into by and between Fort Bend County, Texas ("County"), a political subdivision of the state of Texas, and Edminster, Hinshaw, Russ & Associates, Inc. d/b/a EHRA ("Contractor"), a corporation duly authorized to conduct business in the state of Texas. County and Contractor may be referred to individually as a "Party" or collectively as the "Parties."

WHEREAS, the Parties have accepted Contractor's Proposal for Professional Engineering Services and General Terms and Conditions (the "Agreement"), attached hereto as Exhibit "A" and incorporated by reference, to provide engineering services to perform a preliminary investigation study of two (2) potential regional basin sites adjacent to Stafford Run Creek for Fort Bend County Precinct 3 (the "Services"); and

WHEREAS, pursuant to the requirements of Chapter 2254 of the Texas Government Code, County has determined that Contractor is the most highly qualified provider of such professional services and the Parties have negotiated a fair and reasonable price for the same; and

WHEREAS, this Agreement is not subject to competitive bidding requirements under Section 262.023 of the Texas Local Government Code because this Agreement is for professional engineering services and may not be competitively bid pursuant to Chapter 2254 of the Texas Government Code.

WHEREAS, the following changes are incorporated as if a part of the Agreement:

1. **Recitals.** The recitals set forth above are incorporated herein by reference and made a part of this Agreement.
2. **Scope of Services.** Contractor shall render services to County as defined in Contractor's Proposal dated April 11, 2024 and in the Scope of Work (hereinafter, the "Services") attached hereto as "Exhibit A" and incorporated by reference for all intents and purposes.
3. **Compensation and Payment Terms.**
 - (a) Contractor's fees for the Services shall be calculated at the rate(s) set forth in Exhibit "A" attached hereto. The Maximum Compensation to Contractor for the Services performed under this Agreement is One Hundred Seventeen Thousand One Hundred Forty and no/100 Dollars (\$117,140.00) on a fixed fee basis. In no event shall the amount paid by County to Contractor under this Agreement exceed said Maximum Compensation without an approved change order.
 - (b) Contractor understands and agrees that the Maximum Compensation stated is an all-inclusive amount and no additional fee, cost or reimbursed expense shall be added whatsoever to the fees stated in the attached Exhibit "A."
 - (c) County will pay Contractor based on the following procedures: Upon completion of the tasks identified in the Scope of Services, Contractor shall submit to County one (1)

electronic (pdf) copy of the invoice showing the amounts due for services performed in a form acceptable to County. County shall review such invoices and approve them within 30 calendar days with such modifications as are consistent with this Agreement and forward same to the Auditor for processing. County shall pay each such approved invoice within thirty (30) calendar days. County reserves the right to withhold payment pending verification of satisfactory work performed.

4. **Limit of Appropriation.** Contractor understands and agrees that the Maximum Compensation for the performance of the Services within the Scope of Services described in Section 2 above One Hundred Seventeen Thousand One Hundred Forty and no/100 Dollars (\$117,140.00) on a fixed fee basis. In no event shall the amount paid by County under this Agreement exceed the Maximum Compensation without a County approved change order. Contractor clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of One Hundred Seventeen Thousand One Hundred Forty and no/100 Dollars (\$117,140.00), on a fixed fee basis, specifically allocated to fully discharge any and all liabilities County may incur under this Agreement. Contractor does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total Maximum Compensation that Contractor may become entitled to and the total maximum sum that County may become liable to pay to Contractor under this Agreement shall not under any conditions, circumstances, or interpretations thereof exceed One Hundred Seventeen Thousand One Hundred Forty and no/100 Dollars (\$117,140.00) on a fixed fee basis.
5. **Non-appropriation.** Contractor understands and agrees that in the event no funds or insufficient funds are appropriated by the County under this Agreement, County shall immediately notify Contractor in writing of such occurrence and the Agreement shall thereafter terminate and be null and void on the last day of the fiscal period for which appropriations were received or made without penalty, liability or expense to the County. In no event shall said termination of this Agreement or County's failure to appropriate said funds be deemed a breach or default of this Agreement or create a debt by County in any amount(s) in excess of those previously funded.
6. **Taxes.** County is a body corporate and politic under the laws of the state of Texas and as such, is exempt from sales and use taxes. County shall furnish evidence of its tax-exempt status upon written request by Contractor.
7. **Indemnity.** TO THE FULLEST EXTENT PROVIDED BY APPLICABLE LAW, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS COUNTY, ITS OFFICIALS, OFFICERS, AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, LIABILITY, AND COSTS, INCLUDING THE REIMBURSEMENT OF REASONABLE ATTORNEY FEES, ARISING OUT OF OR RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY CONTRACTOR OR CONTRACTOR'S AGENTS, EMPLOYEES, OR ANOTHER ENTITY OVER WHICH CONTRACTOR EXERCISES CONTROL. CONTRACTOR SHALL FURTHER PROCURE AND MAINTAIN GENERAL LIABILITY INSURANCE WITH COVERAGE AS PROVIDED IN SECTION 8 OF THIS AGREEMENT AND SHALL FURNISH A CERTIFICATE OF INSURANCE FOR THE SAME SHOWING FORT BEND COUNTY, TEXAS AS AN ADDITIONAL INSURED.

8. **Public Information Act.** Contractor expressly acknowledges and agrees that County is a public entity and as such, is subject to the provisions of the Texas Public Information Act under Chapter 552 of the Texas Government Code. In no event shall County be liable to Contractor for release of information pursuant to Chapter 552 of the Texas Government Code or any other provision of law. Except to the extent required by law or as directed by the Texas Attorney General, County agrees to maintain the confidentiality of information provided by Contractor expressly marked as proprietary or confidential. County shall not be liable to Contractor for any disclosure of any proprietary or confidential information if such information is disclosed under Texas law or at the direction of the Texas Attorney General. Contractor further acknowledges and agrees that the terms and conditions of this Agreement are not proprietary or confidential information.
9. **Confidential and Proprietary Information.** Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by Contractor or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Contractor) publicly known or is contained in a publicly available document; (b) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of Contractor who can be shown to have had no access to the Confidential Information.

Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Contractor shall advise County immediately in the event Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Contractor will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Contractor against any such person. Contractor agrees that, except as directed by County, Contractor will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, Contractor will promptly turn over to County all documents, papers, and other matter in Contractor's possession which embody Confidential Information.

Contractor acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against

the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.

Contractor in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

10. **Compliance with Laws.** Contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules, regulations, and the decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. Contractor in providing all services hereunder, further agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.
11. **Independent Contractor.** In the performance of work or services hereunder, Contractor shall be deemed an independent Contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of Contractor. Contractor and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.
12. **Use of Customer Name.** Contractor may use County's name without County's prior written consent only in Contractor's customer lists. Any other use of County's name by Contractor must have the prior written consent of County.
13. **County/County Data.** Nothing in this Agreement shall be construed to waive the requirements of Section 205.009 of the Texas Local Government Code.
14. **Personnel.** Contractor represents that it presently has, or is able to obtain adequate qualified personnel in its employment for the timely performance of the Services required under this Agreement and that Contractor shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of County, to perform the Services when and as required and without delays.

All employees of Contractor shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Contractor or agent of Contractor who, in County's opinion, is incompetent or by his conduct become detrimental to providing Services pursuant to this Agreement, shall, upon request of County, immediately be removed from association with the Services required under this Agreement.

When performing Services on-site at County's facilities, Contractor shall comply with, and will require that all Contractor's Personnel comply with, all applicable rules, regulations and known policies of County that are communicated to Contractor in writing, including security procedures concerning systems and data and remote access thereto, building security procedures, including the restriction of access by County to certain areas of its premises or systems for security reasons, and general health and safety practices and procedures.

15. **Force Majeure.** Notwithstanding anything to the contrary contained herein, neither Party shall be liable to the other for any delay or inability to carry out its obligations under this Agreement if such delay or inability is the result of a Force Majeure Event. Within a reasonable time after the occurrence of such event, the Party whose obligations are affected (the "Affected Party") thereby shall notify the other in writing stating the nature of the event and the anticipated duration. The Affected Party's obligations under this Agreement shall be suspended during the continuance of any delay or inability caused by the event, but for no longer period. The Affected Party shall further endeavor to remove or overcome such delay or inability as soon as is reasonably possible.

For purposes of this Agreement, a Force Majeure Event includes, but is not limited to: strikes or other labor disputes, severe weather disruptions, natural disasters, fire or other acts of God; riots, war, or other emergencies; failure of any governmental agency to act in a timely manner; the discovery of any hazardous substance or differing and unforeseeable site conditions; and any other inability of any Party, similar to those enumerated, which are not within the control of the Party claiming such inability, which such Party could not have avoided by the reasonable exercise of due diligence and care.

16. **Attorney Fees.** County does not agree to pay any and/or all attorney fees incurred by Contractor in any way associated with this Agreement.
17. **Arbitration.** County does not agree to submit disputes arising out of the Agreement to binding arbitration. Therefore, any references to binding arbitration or the waiver of a right to litigate a dispute are hereby deleted.
18. **Assignment.** Contractor may not assign this Agreement to another party without the prior written consent of County.
19. **Successors and Assigns Bound.** County and Contractor each bind themselves and their successors and assigns to the other Party and to the successors and assigns of such other Party, with respect to all covenants of this Agreement.
20. **Publicity.** Contact with citizens of Fort Bend County, media outlets, or other governmental agencies shall be the sole responsibility of County. Under no circumstances, whatsoever, shall Contractor release any material or information developed or received during the performance of Services hereunder unless Contractor obtains the express written approval of County or is required to do so by law.
21. **Performance Representation.** Contractor represents to County that Contractor has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession ("Professionals") practicing in the greater Houston metropolitan area. Contractor shall provide the Services to County with the same professional skill and care ordinarily provided by such Professionals under the same or similar circumstances and professional license and as expeditiously as is prudent considering the ordinary professional skill and care of a competent Professional.
22. **Entire Agreement and Modification.** This Agreement constitutes the entire Agreement between the Parties and supersedes all previous agreements, written or oral, pertaining to the subject matter of this Agreement. Any amendment to this Agreement must be in writing and signed by each Party to come into full force and effect.

23. **Understanding Fair Construction.** By execution of this Agreement, the Parties acknowledge that they have read and understood each provision, term, and obligation contained herein. This Agreement, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting Party than the non-drafting Party.
24. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
25. **No Waiver of Immunity.** Neither the execution of this Agreement nor any other conduct of either party relating to this Agreement shall be considered a waiver or surrender by County of its governmental powers or immunity under the Texas Constitution or the laws of the state of Texas.
26. **Applicable Law and Venue.** This Agreement shall be construed according to the laws of the state of Texas. Venue for any claim arising out of or relating to the subject matter of this Agreement shall lie in a court of competent jurisdiction of Fort Bend County, Texas.
27. **Certain State Law Requirements for Contracts.** The contents of this Section are required by Texas law and are included by County regardless of content For purposes of Sections 2252.152, 2271.002, and 2274.002, Texas Government Code, as amended, Contractor hereby verifies that Contractor and any parent company, wholly owned subsidiary, majority-owned subsidiary, and affiliate:
- (a) Unless affirmatively declared by the United States government to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization, is not identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 806.051, 807.051, or 2252.153 of the Texas Government Code.
 - (b) If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Contractor does not boycott Israel and is authorized to agree in such contracts not to boycott Israel during the term of such contracts. "Boycott Israel" has the meaning provided in § 808.001 of the Texas Government Code.
 - (c) If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Contractor does not boycott energy companies and is authorized to agree in such contracts not to boycott energy companies during the term of such contracts. "Boycott energy company" has the meaning provided in § 809.001 of the Texas Government Code.
 - (d) If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Contractor does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and is authorized to agree in such contracts not to discriminate against a firearm entity or firearm trade association during the term of such contracts. "Discriminate against a firearm entity or firearm trade association" has the meaning provided in §

2274.001(3) of the Texas Government Code. "Firearm entity" and "firearm trade association" have the meanings provided in § 2274.001(6) and (7) of the Texas Government Code.

28. **Human Trafficking.** BY ACCEPTANCE OF THIS AGREEMENT, CONTRACTOR ACKNOWLEDGES THAT FORT BEND COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.
29. **Captions.** The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of the Agreement.
30. **Electronic and Digital Signatures.** The Parties to this Agreement agree that any electronic and/or digital signatures of the Parties included in this Agreement are intended to authenticate this writing and shall have the same force and effect as the use of manual signatures.
31. **Certification.** By his or her signature below, each signatory individual certifies that he or she is the properly authorized person or officer of the applicable Party hereto and has the requisite authority necessary to execute this Agreement on behalf of such Party, and each Party hereby certifies to the other that it has obtained the appropriate approvals or authorizations from its governing body as required by law.

{Execution Page Follows}

IN WITNESS WHEREOF, and intending to be legally bound, County and Contractor hereto have executed this Addendum to be effective on the date signed by the last Party hereto.

FORT BEND COUNTY, TEXAS

EDMINSTER, HINSHAW, RUSS & ASSOCIATES, INC.

KP George

KP George, County Judge

September 25, 2024

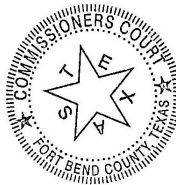
Date

Approved by Commissioners Court 9/24/24

ATTEST:

Laura Richard

Laura Richard, County Clerk



Andrew V. Palermo

Authorized Agent - Signature

Andrew V. Palermo

Authorized Agent- Printed Name

Managing Principal

Title

08/26/2024

Date

APPROVED:

Mark Vogler

Mark Vogler, General Manager/Chief Engineer
Fort Bend County Drainage District

AUDITOR'S CERTIFICATE

I hereby certify that funds in the amount of \$117,140.00 are available to pay the obligation of Fort Bend County, Texas within the foregoing Agreement.

Robert Ed Sturdivant

Robert Ed Sturdivant, County Auditor

i:\agreements\2024 agreements\purchasing\drainage district\edminster, hinshaw, russ & associates, inc (24-drng-100771)\agmt for professional eng svcs.feasibility study (kcj - 7.5.2024)

EXHIBIT A

(Follows Behind)



TBPE No. F-726
TBPLS No. 10092300

April 11, 2024

Commissioner Andy Meyers
Fort Bend County Precinct 3
c/o Mr. Mark Vogler, P.E.
General Manager and Chief Engineer
Fort Bend County Drainage District
1124 Blume Road
Rosenberg, Texas 77471

Re: Proposal for Professional Engineering Services to Perform a
Preliminary Investigation Study for Two (2) Regional Basin Sites
Stafford Run Creek Watershed
Fort Bend County Precinct 3
EHRA Project No. 231-094-00

Dear Commissioner Meyers:

Edminster, Hinshaw, Russ & Associates, Inc. d/b/a EHRA (Engineer) is pleased to submit this proposal for professional engineering services to Fort Bend County Precinct 3 (Client) to perform a preliminary investigation study of two (2) potential regional basin sites adjacent to Stafford Run Creek (Project). The analysis will comprise of an overall review of the existing watershed models, modifications to the existing models based on research and findings, and proposed alternatives analysis of the regional basin sites to determine if the addition of the basins could improve flood hazard conditions for the stream.

SCOPE OF SERVICES

Engineer will provide professional engineering services as follows:

A. BASIC SERVICES

1. Project Management

- a. Coordination with Fort Bend County Drainage District (FBCDD) through Virtual or In-Person Meetings. This Scope of Services assumes four (4) meetings between Engineer and FBCDD and/or Client.
- b. Monthly Invoicing and Progress Reports as needed assuming the project duration is five (5) months.

B. RESEARCH AND DATA COLLECTION

1. Data Collection/Review

- a. Obtain most recent hydrologic and hydraulic models for Stafford Run Creek from FBCDD. Review and evaluate the analysis and report.
- b. Obtain previous reports for Stafford Run Creek from FBCDD. Review and evaluate differences from the most recent report.
- c. Collect background information such as geographic land uses, drainage area maps for roadway storm sewer systems within the project vicinity, GIS information, or anything that would have an impact to the existing flood hazard conditions along the stream.

2. Field Reconnaissance

- a. Conduct field visits to better understand existing conditions and project constraints. This Scope of Services assumes one (1) full day for a field visit.

C. EXISTING CONDITIONS ANALYSIS

1. Watershed Drainage Area Delineation

- a. Use the FBCDD 2021 hydrologic model for Stafford Run Creek as a base condition. Evaluate and refine drainage areas based on differences found in past reports, EHRA field reconnaissance, as-built construction plans, or any other additional background information collected for the Stafford Run Creek Watershed.

2. Hydrologic Calculations and Analysis

- a. Update the FBCDD 2021 hydrologic model for Stafford Creek Run based on any watershed delineation revisions determined from the investigation. Updates to the hydrologic model will follow the same modeling methods used for the 2021 watershed modeling of Stafford Run Creek.

3. Hydraulic Analysis Updates

- a. Refine the FBCDD 2021 existing conditions base model for Stafford Run Creek to incorporate recent changes because of this focused investigation and add or modify any cross-sections that may be needed for proposed conditions modeling of the regional basin sites. Modifications to the existing conditions model could include land use changes, cross-section additions or revisions, modification of study limits, or culvert or bridge crossing updates to name a few.



ENGINEERING THE FUTURE
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- b. Updates to the existing conditions hydraulic model will also include incorporating any inflow data due to any modifications made to the existing conditions hydrologic model.

D. PROPOSED CONDITIONS ANALYSIS

1. Regional Basins Conceptual Planning

The objective of the proposed conditions analysis will be to incorporate two (2) regional mitigation basins adjacent to Stafford Run Creek at two (2) separate regional basin sites currently owned by Fort Bend County. The analysis will be performed to determine the benefits of constructing the regional mitigation basins with regards to the existing flood hazard conditions. Analysis will be performed to recommend whether the basins will provide enough benefit to move forward with design and construction.

- a. Prepare conceptual plan for the two (2) proposed basins using ArcGIS software with existing LiDAR data for Fort Bend County to incorporate into the proposed conditions hydraulic models.
- b. Engineer will create conceptual basin layout exhibits for the two (2) regional basins to show the configuration modeled.

2. Hydraulic Analysis of Regional Basin

- a. Prepare proposed conditions hydraulic modeling of Stafford Run Creek to analyze the flood hazard conditions incorporating the two (2) proposed regional mitigation basins. Analysis will consist of analyzing inline detention, weir and pipe options that will connect the basin to the stream to provide additional volume for the existing flood hazard conditions. It is assumed the basins would be constructed to provide flood mitigation volume and not detention volume for future development in the area.
- b. Analysis will also consist of review of the stream crossings just downstream at Eagle Road and Avenue E to make any recommendations that could improve any restrictions that currently exist at the stream crossing.

3. Memorandum

- a. Engineer will prepare a memorandum summarizing the investigation and analysis results, as well as recommendations for the regional basins and Avenue E stream crossing. The memorandum will include necessary exhibits and output data for reference. It should be noted that this Scope of Services does not include preparation of a full drainage report or Preliminary Engineering Report (PER). The purpose of the memorandum is to be prepared only as a summary of the analysis.



This Scope of Services does not include any final design or preparation of construction plans for the proposed improvements analyzed with this study. These services can be provided under a Separate Contract if Client should decide to move forward with final design and construction. Because the services provided under this contract are for feasibility purposes only, this Scope of Services does not include any topographic survey, geotechnical, environmental, or SUE services. If this analysis needs to be updated based on final design and construction plans, this service will be provided under a future contract. It is understood that any field condition measurements and/or survey work needed for this analysis will be obtained/provided by Client.

E. ADDITIONAL SERVICES

Engineer will provide the following Additional Services if authorized by Client on an hourly basis:

- Additional hydrologic and hydraulic analysis of specified areas within the watershed outside of the Scope of Services, as requested by FBCDD.

COMPENSATION

Engineer proposes to provide the above-described Scope of Services to Client, on a **fixed fee basis, in the amount of \$117,140.00, plus Additional Services if authorized by Client to be provided on an hourly basis not to exceed \$32,900.00 (see attached Level of Effort Worksheet)**. Any work not specified above that may arise will be considered an Additional Service and as such, Engineer will not proceed with any Additional Services without prior written authorization by Client. Any Additional Services not contemplated under this Agreement can only be provided by a separate proposal or change order.

PAYMENT

Engineer shall submit invoice(s) for services rendered and Client shall make prompt payment(s) in response to Engineer's invoice(s).

The General Terms and Conditions of this proposal are attached hereto and made a part hereof for all purposes.



If all terms and provisions are acceptable to you, please signify so by executing this document in the appropriate space provided. Please retain one (1) executed copy for your records and return one (1) executed copy to the undersigned. We will consider receipt of this executed document as our authorization to proceed.

We thank you for the opportunity to provide professional engineering services and we look forward to working with you on this project.

CLIENT AND ENGINEER AGREE AS SET FORTH ABOVE.

CLIENT

FORT BEND COUNTY, PRECINCT 3

By: _____
Andy Meyers
Commissioner

Effective Date: _____

ENGINEER

**EDMINSTER, HINSHAW, RUSS
& ASSOCIATES, INC. d/b/a EHRA**

Ruben J. De La Fuente, Jr.

By: _____
Ruben J. De La Fuente, Jr, P.E., CFM
Senior Project Manager –
Hydrology & Hydraulics

04 / 11 / 2024
Date: _____

Andrew V. Palermo

By: _____
Andrew V. Palermo, P.E., CFM
Senior Vice President

04 / 11 / 2024
Date: _____

AVP/sf

Attachments: Level of Effort Worksheet
General Terms and Conditions



Project: Stafford Run Creek Study for FBCDD
 EHRA Project No.: 231-094-00 (12)

Item	Description	Est Hours - PAL		Est Hours - Sr. PM		Est Hours - Eng III		Est Hours - Sr. Design		Amount
		Hourly Rate		Hourly Rate		Hourly Rate		CAD Tech	Hourly Rate	
	Feasibility Study									
	Project Management (5 months)	5	\$ 275.00	10	\$ 250.00		\$ 140.00		\$ 150.00	\$ 3,875.00
	Meetings/Coordination w/ FBCDD	8	\$ 275.00	12	\$ 250.00	12	\$ 140.00		\$ 150.00	\$ 6,880.00
	Data Collection and Review Existing Models	2	\$ 275.00	8	\$ 250.00	32	\$ 140.00		\$ 150.00	\$ 7,030.00
	Field Reconnaissance - Includes 1 Day for Site Visit	8	\$ 275.00	8	\$ 250.00	8	\$ 140.00		\$ 150.00	\$ 5,320.00
	Existing Conditions - Watershed DA Delineation & Hydrologic Calcs/Analysis	4	\$ 275.00	16	\$ 250.00	32	\$ 140.00		\$ 150.00	\$ 9,580.00
	Existing Conditions - Hydraulic Analysis Updates	2	\$ 275.00	8	\$ 250.00	32	\$ 140.00		\$ 150.00	\$ 7,030.00
	Proposed Conditions - Regional Basin Conceptual Plan (2 Basin Sites)	1	\$ 275.00	2	\$ 250.00	40	\$ 140.00		\$ 150.00	\$ 6,375.00
	Proposed Conditions - Hydraulic Analysis for Alternatives to Utilize FBC Tracts	8	\$ 275.00	60	\$ 250.00	120	\$ 140.00		\$ 150.00	\$ 34,000.00
	Proposed Conditions - Hydraulic Analysis for Eagle Land Rd. and Avenue E Culvert Crossings	2	\$ 275.00	16	\$ 250.00	60	\$ 140.00		\$ 150.00	\$ 12,950.00
	Preparation of Memo and Exhibits Documenting Analysis	2	\$ 275.00	20	\$ 250.00	60	\$ 140.00		\$ 150.00	\$ 13,950.00
	Revisions to Analysis and Memo based on FBC/FBCDD Review	2	\$ 275.00	16	\$ 250.00	40	\$ 140.00		\$ 150.00	\$ 10,150.00
	TOTAL	44		176		436				\$ 117,140.00

General Terms and Conditions

1. SCOPE – Upon execution of the attached Proposal, **Client**, and Edminster, Hinshaw, Russ & Associates, Inc. d/b/a **EHRA**, ("**EHRA**") enter into this agreement ("Agreement"), which shall include the Proposal and these Terms and Conditions (the "Terms and Conditions"). **EHRA** agrees to perform the scope of services (the "Services") described in the Proposal, which incorporates these Terms and Conditions. Unless modified in writing by the parties hereto (the "Parties"), the duties of **EHRA** shall not exceed the Services specifically set forth in the Proposal. **EHRA** shall perform its obligations under the Agreement as an independent contractor and not as a fiduciary of any Party. The Project is defined in the Proposal. **EHRA** shall be entitled to subcontract any portion of the Services to consultants. If there is any conflict between the provisions in the Terms and Conditions and the Proposal, the provisions of the Terms and Conditions shall control and be given effect.

2. COMPENSATION – Without offset related to other invoices or claims, **Client** agrees to pay monthly invoices within 30 days of receipt. If charges on an invoice are disputed, **Client** shall pay all undisputed portions. If **Client** fails to make any payment due to **EHRA** within thirty (30) days after receipt of **EHRA's** invoice, the amounts due to **EHRA** will be increased at the rate of 1% per month from said thirtieth (30) day. **Client's** payments to **EHRA** shall not be contingent upon **Client's** receipt of payment, funding, reimbursement, or any other remuneration from others.

3. STANDARD OF CARE – **EHRA** agrees to follow standard practices of the engineering profession, consistent with and limited to that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality (the "Standard of Care"). Other than performing the Services pursuant to the Standard of Care, **EHRA** makes no other express or implied

representations or warranties with respect to the Services or performance hereunder.

EHRA shall not be required to provide any certification or warranty of the Services but, upon request and for a separate fee and at **EHRA's** sole discretion, **EHRA** may agree to provide certain written statements regarding the Services. Such statements shall be in a form acceptable to **EHRA** and shall be requested with sufficient advance notice to allow **EHRA** to review the documents and prepare a suitable statement.

4. CONSTRUCTION – **EHRA** shall not supervise, direct, or have control over any construction arising from or related to the Services or the Project (the "Work"). **EHRA** shall not have any responsibility for: i) the construction means, methods, techniques, sequences, or procedures selected to perform the Work, or ii) any safety precautions or programs in connection with the Work, and any health or safety precautions required by any regulatory agencies. **EHRA** shall not be responsible for any acts or omissions of any contractor, subcontractor, entity, or individual (collectively the "Contractors") performing any portions of the Work. **EHRA** shall have no liability to **Client** if the Work is not completed in strict conformity with the construction drawings, specifications, reports, data, and other information developed in the Services (the "Design Documents"). **Client** agrees the Contractors performing the Work shall be solely responsible and liable if the Work does not strictly conform to all Design Documents.

5. SCOPE OF CLIENT SERVICES – **Client** agrees to provide site access, as needed, for **EHRA** to perform the services described in the attached Proposal. In performing the Services, **EHRA** shall be entitled to rely upon the accuracy and completeness of services, Design Documents, reports, and information furnished by the **Client** and the **Client's** consultants without independent investigation or verification.



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6. OWNERSHIP OF DOCUMENTS – Upon **EHRA's** completion of Services and receipt of full payment, **EHRA** grants to **Client** a non-exclusive license to the Design Documents. The Design Documents may be copied, duplicated, reproduced, and used by **Client** for the purpose of constructing, operating, and maintaining the improvements. **Client** agrees that the Design Documents are not intended or represented to be suitable for reuse by **Client** or others for purposes outside the Project. Notwithstanding the foregoing, **Client** understands and agrees that the Design Documents are and shall remain the sole and exclusive property of **EHRA** and may not be used or reused, in any form, by **Client** without the express written authorization of **EHRA**. **Client** agrees that any reuse and/or modification by **Client** of the Design Documents, or by those who obtain said information from or through **Client**, without written verification or adaptation by **EHRA**, will be at **Client's** sole risk and without liability or legal exposure to **EHRA** or **EHRA's** sub-consultants. **Client** agrees to indemnify **EHRA** and **EHRA's** sub-consultants for all damages, liability or cost arising from such reuse. **EHRA** may reuse all the Design Documents in **EHRA's** other activities.

7. ELECTRONIC FILE TRANSFER AGREEMENT- **EHRA** agrees to provide **Client** with an electronic data file ("Electronic File") representing the work which **EHRA** prepares for **Client**, contingent upon **Client's** acceptance and execution of the Agreement, at the written request of **Client**. This Agreement only grants **Client** permission to view the Electronic File data for informational purposes only. All information, including licenses, images, and fonts within the Electronic File remains the property of **EHRA**. **EHRA** makes no warranty, expressed or implied, as to the correctness, completeness, or accuracy of the Electronic File information. **EHRA** disclaims any liability for the accuracy or completeness of the information and **Client** assumes all risk for its use. The Electronic File is being provided in a file format compatible with the software currently used by **EHRA** and prepared according to the

standards (file names, layers, symbols, etc.) chosen by **EHRA**. **EHRA** makes no representation that the Electronic File can be utilized with any hardware or software other than the hardware and software that **EHRA** utilized to generate the files. **Client** is responsible for assuring the data is compatible with any software, hardware, or other environment contemplated by **Client**, and acknowledges that data stored on electronic media may deteriorate due to the instability of the media, environmental conditions, or tampering. This Agreement is solely for **Client** and does not permit **Client** to transfer the Electronic File or any data therein to any third party or to modify the data. In the event that **Client** modifies or transfers the Electronic File to third parties, **Client** will remove all indicia of **EHRA**. **Client** agrees to indemnify and hold **EHRA** harmless from all claims, liabilities, damages, losses and expenses, including attorney's fees, related to or resulting from the use, misuse, modification, or transfer of the Electronic File data, including licensed images and fonts, by **Client** or others whom **Client** has released this data.

8. HAZARDOUS MATERIALS – **EHRA** shall have no responsibility for the discovery, presence, handling, removal, or disposal of, or exposure of persons to hazardous materials or toxic substances in any form at the Project site, except to the extent the same are brought onto the site by **EHRA**. **Client** shall indemnify and defend **EHRA** for any and all liability, claims, expenses, and losses arising out of the presence of hazardous materials or conditions except for those claims as determined by final judgment of a court of competent jurisdiction to arise out of the sole negligence of **EHRA**.

9. INSURANCE – **EHRA** shall maintain during the performance of the Services and the construction of the Work related to the Services the following minimum insurance:

- Commercial general liability insurance, including personal injury liability, blanket contractual liability, and broad form property



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damage liability. The limit shall be not less than \$1,000,000 per occurrence/\$2,000,000 aggregate.

- Automobile bodily injury and property damage liability insurance with a limit of not less than \$1,000,000 per occurrence.
- Statutory workers' compensation and employers' liability insurance as required by state law.
- Professional liability insurance (Errors and Omissions) with a limit of \$2,000,000 per claim.

10. WAIVER OF SUBROGATION – To the extent any damages are covered by property insurance during construction, **Client** and **EHRA** agree to obtain waivers of subrogation from their respective property insurance carriers and further waive all claims against each other for such damages.

11. TERMINATION OF WORK – Either the **Client** or **EHRA** may terminate this Agreement at any time with or without cause upon giving the other party ten (10) days' prior written notice. **Client** agrees that termination of **EHRA** for **Client's** convenience shall only be utilized in good faith and shall not be utilized if the purpose or result is the performance of all or part of **EHRA's** services under this Agreement by **Client** or by another service provider. **Client** shall within ten (10) days of termination pay **EHRA** for all services rendered and all costs incurred up to the date of **EHRA's** receipt of notice of termination in accordance with the compensation provisions of this Agreement.

12. SUSPENSION OF SERVICES – If work under this Agreement is suspended for more than thirty (30) days in the aggregate, **EHRA** shall be compensated for services performed and suspend and, upon resumption, an equitable adjustment in fees to accommodate the resulting demobilization and mobilization costs and there also shall be an equitable adjustment in the work schedule based on the delay caused by the suspension. If **Client** fails to pay undisputed **EHRA** invoices within thirty (30) days

of receipt or is otherwise in breach of this Agreement, upon five (5) days' notice to the **Client**, **EHRA** may suspend performance of Services until **EHRA** has been paid in full all amounts due. **EHRA** shall have no liability whatsoever to the **Client** for any costs, expenses, or damages as a result of such suspension.

13. TAXES – The fees and costs stated in the Proposal, unless stated otherwise, exclude all sales, consumer, use and other taxes. All taxable services will have tax amounts included at the time of invoicing.

14. DISPUTE RESOLUTION – Conflicts or disputes related to this Agreement, or the Services shall be discussed in person between senior management from **EHRA** and **Client**. If no agreement is reached, the Parties shall mediate as a condition precedent to filing any legal or equitable proceedings, unless such will infringe upon applicable statutes of limitation or repose. The cost of a third-party mediator will be shared equally by the Parties. In the event mediation is not successful, the Parties agree to litigation as the form of dispute resolution. In litigation, and regardless of any statute, reasonable and necessary attorneys' fees related to a claim arising from or related to the Services or the Agreement will be awarded only to the "Substantially Prevailing Party" as defined herein. The term "Substantially Prevailing Party," is defined herein as follows: i) To be a Substantially Prevailing Party, the Party making the claim is required to and must deliver a written demand to the other Party at least thirty (30) calendar days prior to filing a lawsuit. ii) The demand must state a specific dollar amount owed that includes all alleged direct damages and any indirect damages and expenses related to asserting the claim, if any, such as attorney's fees, expert fees, and other expenses. iii) In the lawsuit, the Party making the claim must be awarded from the trier of fact direct damages equal to or greater than 75% of the total amount (including indirect damages and expenses, if any, related to asserting the claim, such as attorney's



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fees, expert fees, and other expenses) that the Party demanded against the other Party before or concurrently with filing suit. iv) If the Party making the claim does not recover actual damages (excluding indirect damages and expenses related to asserting the claim, such as attorney's fees, expert fees, pre-judgment interest, and court costs) equal to or greater than 75% of the total dollar amount demanded before or concurrently with filing the lawsuit, the Party defending the claim is the Substantially Prevailing Party and will be awarded reasonable and necessary attorney's fees. v) If the Party making the claim does not make a written demand as required herein, then neither Party will be the Substantially Prevailing Party and reasonable and necessary attorney's fees will not be awarded to either Party. vi) If a written demand cannot be delivered thirty (30) days before filing suit because a statute of limitations or repose may pass, then the written demand must be filed no later than the date a lawsuit is filed.

15. ASSIGNMENT – This Agreement is binding on the heirs, successors, and assigns of the Parties. Neither this Agreement, nor any claims, rights, obligations, or duties associated hereto, shall be assigned or assignable by either Party without the prior written consent of the other Party.

16. INTEGRATION – This Agreement represents the entire understanding of the Parties. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. The Agreement may not be modified or altered except in writing signed by both Parties. This Agreement may not be contradicted by any evidence of prior, contemporaneous, or subsequent oral agreements or representations of the Parties. No Party has made any promise or representation about the Agreement that is not expressly stated in the Agreement

17. JURISDICTION AND VENUE – This Agreement shall be controlled and interpreted under the

laws of the State Texas. The location or venue for any claims arising out of or relating to this Agreement shall be filed in Harris County, Texas.

18. SEVERABILITY – In the event any term or provision of this Agreement is found to be void, unenforceable or invalid for any reason, all other terms and provisions of this Agreement shall continue in full force and effect, and the Parties agree that any unenforceable or invalid term or provision shall be amended to the minimum extent required to make such term or provision enforceable and valid and to as close as possible express the intention of the stricken provision.

19. COOPERATION – The Parties agree to cooperate and to execute all supplemental documents and to take all additional actions necessary to give full force and effect to the terms and intent of this Agreement.

20. CORPORATE LIABILITY ONLY – No owner, officer, employee, design professional, or agent of either Party shall have individual liability to the other Party for any claim arising from or related to the Agreement or the Services. No liability related to this Agreement, or the Services shall be found in favor of either Party against any owner, officer, design professional, agent, or employee of the other Party. Regardless of the cause of action asserted, **Client** shall look solely to **EHRA** and its consultants for performance of the Services and for any liability arising from or related to this Agreement and the Services.

21. TIMELINESS OF PERFORMANCE – **Client** recognizes that the Standard of Care requires **EHRA** to take reasonable time to perform its professional services.

22. PROJECT ENHANCEMENT – If due to any error, negligence, or deficiency in the Services of EHRA or any of its consultants, any condition, component, or item in the Services or Project are inaccurate or omitted from any of the design documents provided under this Agreement, EHRA's and its

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consultant's liability, if any, shall exclude any and all damages, costs, or expenses that create added value, upgrade, betterment, or enhancement of the Project from the inaccurate or omitted condition, component, or item as originally designed.

23. CONSEQUENTIAL DAMAGES - CLIENT AND EHRA WAIVE CONSEQUENTIAL DAMAGES FOR ANY CLAIMS, DISPUTES OR OTHER MATTERS IN QUESTION ARISING OUT OF OR RELATING TO THIS AGREEMENT. AS USED HEREIN, THE TERM "CONSEQUENTIAL DAMAGES" SHALL BE DEFINED AS, LOSS OF OPPORTUNITY OR USE, LOSS OF PROFIT WHETHER DIRECT OR INDIRECT, LOSS OF BUSINESS, LOSS OF INCOME OR REVENUE, LOSS OF REPUTATION OR CREDIT, SPECIAL OR INCIDENTAL DAMAGES, BUSINESS INTERRUPTIONS, LOSS OF EXPENSES INCLUDING PERSONNEL THAT EITHER PARTY MAY INCUR AND THIS WAIVER SHALL APPLY REGARDLESS OF THE CAUSE OF ACTION OR LEGAL THEORY PLED OR ASSERTED, INCLUDING BUT NOT LIMITED TO NEGLIGENCE AND BREACH OF CONTRACT.

24. LIMITATION OF LIABILITY - IN RECOGNITION OF THE RELATIVE RISKS AND BENEFITS OF THE PROJECT TO BOTH THE CLIENT AND EHRA, CLIENT AGREES, THAT THE TOTAL LIABILITY IN THE AGGREGATE, OF EHRA AND ITS CONSULTANTS TO THE CLIENT OR TO ANYONE CLAIMING BY, THROUGH OR UNDER THE CLIENT, FOR ANY AND ALL CLAIMS, LOSSES, COSTS, OR DAMAGES ARISING OUT OF THE AGREEMENT OR THE SERVICES SHALL NOT EXCEED EHRA'S FEE FOR THE SERVICES PERFORMED UNDER THIS AGREEMENT OR \$50,000, WHICHEVER IS LESS. INCREASED LIMITS MAY BE NEGOTIATED FOR ADDITIONAL FEE. THIS LIMITATION SHALL APPLY REGARDLESS OF: I) ANY OTHER PROVISIONS OF THIS AGREEMENT OR THE EXISTENCE OF APPLICABLE INSURANCE COVERAGE, II) THE CAUSE OF ACTION OR LEGAL THEORY PLED OR UPON WHICH ANY JUDGMENT IS BASED, INCLUDING BUT NOT LIMITED TO

NEGLIGENCE AND BREACH OF CONTRACT, AND III) THE DAMAGES OR EXPENSES CLAIMED OR AWARDED.

25. WAIVER AND AMENDMENT - Any failure by **EHRA** to require strict compliance with any provision of this Agreement shall not be construed as a waiver of such provision, and **EHRA** may subsequently require strict compliance at any time, notwithstanding any prior failure to do so. No waiver, modification, or amendment of any provision of this Agreement shall be deemed, or shall constitute, a waiver, modification, or amendment of any other provision, whether or not such other provision is similar. No provision, or part of this Agreement may be waived, modified, or amended, unless such waiver, modification, or amendment be made in writing and executed by the Party against whom such waiver, modification, or amendment is asserted.

26. COPIES - A fully executed copy of this Agreement is as effective for all purposes as an original.

27. THIRD PARTY BENEFICIARY - **Client** shall be an intended third-party beneficiary of each agreement between **EHRA** and any consultant retained by **EHRA**. **Client**, as third-party beneficiary, shall have the right and option of enforcing **EHRA's** agreements with its consultants, including without limitation any warranties, and to seek any remedy at law, or in equity arising out of the consultant's violation of such agreement. Otherwise, as a third-party beneficiary, **Client** shall have no obligations to any consultant.

28. HEADINGS - All headings used in this Agreement are for the convenience of the Parties only and shall not in any way be used to limit the interpretation of any section or provision in this Agreement.

29. IMAGES - **EHRA** retains the right to use photographs and drawings of the Project in the



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promotion of **EHRA's** business including printed material, web sites, and other forms of marketing as deemed necessary and appropriate by **EHRA**.

30. LIMITATIONS – All legal actions by either Party against the other arising out of or in any way connected with this Agreement or the Services shall be barred and under no circumstances shall any such legal action be initiated by either Party after two (2) years from the date the cause of action arose.

31. EQUAL OPPORTUNITY - All Parties to this agreement shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a), if applicable. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or genetic information. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, genetic information, protected veteran status or disability. All parties to this agreement also shall abide by the requirements of 29 CFR Part 471, Appendix A to Subpart A, if applicable. -END-



Signature Certificate

Reference number: TVSMD-IEKTC-TQPZQ-F6XUH

Signer

Timestamp

Signature

Ruben Del Fuente

Email: rdelafuente@ehra.team

Sent:

11 Apr 2024 15:27:07 UTC

Viewed:

11 Apr 2024 15:27:36 UTC

Signed:

11 Apr 2024 15:28:16 UTC

Ruben J. De La Fuente, Jr

Recipient Verification:

✓ Email verified

11 Apr 2024 15:27:36 UTC

IP address: 50.230.36.74

Location: Houston, United States

Andy Palermo

Email: apalermo@ehrainc.com

Sent:

11 Apr 2024 15:27:07 UTC

Viewed:

11 Apr 2024 15:29:25 UTC

Signed:

11 Apr 2024 15:30:10 UTC

Andrew V. Palermo

Recipient Verification:

✓ Email verified

11 Apr 2024 15:29:25 UTC

IP address: 73.155.205.7

Location: Magnolia, United States

Document completed by all parties on:

11 Apr 2024 15:30:10 UTC

Page 1 of 1



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CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

**OFFICE USE ONLY
CERTIFICATION OF FILING**

Certificate Number:
2024-1209158

Date Filed:
09/03/2024

Date Acknowledged:
09/24/2024

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Edminster, Hinshaw, Russ & Associates, Inc.
Houston, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

Fort Bend County

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

13382
Professional Engineering Services

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	McGregor, Preston	Houston, TX United States	X	
	Palermo, Andrew	Houston, TX United States	X	
	Syed, Aqil	Houston, TX United States	X	
	Bowlin, Jared	Houston, TX United States	X	
	Russ, James	Houston, TX United States	X	

5 Check only if there is NO Interested Party.

☐**6 UNSWORN DECLARATION**

My name is _____, and my date of birth is _____.

My address is _____, _____, _____, _____, _____.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on the _____ day of _____, 20____.
(month) (year)

Signature of authorized agent of contracting business entity
(Declarant)